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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO ALEJANDRO LOPEZ,

Defendant and Appellant.

D063377

(Super. Ct. No. SCN302587)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J. Kearney, Judge. Affirmed.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Sergio Alejandro Lopez of discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3, subd. (a); count 4),¹ possessing a firearm as a

¹ All further statutory references are to the Penal Code.

felon (§ 29800, subd. (a)(1); count 5), and resisting an officer (§ 148, subd. (a); count 6). He pleaded no contest to violating a protective order (§ 166, subd. (c)(1); count 7).² The court found true allegations of a prison prior (§§ 667.5, subd. (b), 668), two serious felony priors (§§ 667, subd. (a)(1), 668, 1192.7, subd. (c)), and two strike priors (§§ 667, subd. (b)-(i), 668, 1170.12).

The court sentenced Lopez as follows: on count 4, 25 years to life; on count 5, 25 years to life, stayed under section 654; and on counts 6 and 7, concurrent terms of 258 days, credit for time served. The court struck the prison prior finding and determined the serious felony priors were inapplicable. The court denied Lopez's request that it exercise its discretion to dismiss the prior strike findings for sentencing purposes.

FACTS

In February 2012 Lopez's former girlfriend advised the Escondido Police Department that he had threatened her life. A text message Lopez sent to his girlfriend also appeared to threaten police officers. It read, "The cop will do you and your mom a favor, but soon believe me, I'm going to take one with me."

From his cell phone use, officers tracked Lopez to a mobilehome park. Officer Kevin Toth located Lopez talking on his cell phone, but he quickly disappeared from Toth's view. SWAT officers, including Tom Love, also went to the mobilehome park. Officer Love moved in the direction Officer Toth had last seen Lopez, and shortly

² The jury found Lopez not guilty of two counts of making a criminal threat (§ 422), two counts of assault on a peace officer with a semiautomatic firearm (§ 245, subd. (d)(2)), and resisting an executive officer (§ 69).

thereafter both officers heard two gunshots. Another officer, Jared Lunt, was near Lopez, and he also heard the two gunshots. In addition, Lunt saw two "muzzle flashes" from the firing of bullets coming from Lopez's torso area. One of the bullets struck a truck parked at the mobilehome, and additional bullet shells were found. A chase ensued, involving police dogs and a helicopter, but Lopez got away. Officer Love found an athletic shoe and a broken cell phone at the scene. Officer Lunt saw those items fall from Lopez during the chase.

About three months later, an officer with the Escondido Police Department took custody of Lopez at the Mexican border. The officer searched Lopez's belongings and found a single athletic shoe. Lopez stated, "Now you guys have the other shoe." The officer asked Lopez what he meant, and he responded, "You guys got my other shoe that day." Lopez said to another officer, "Have you been training?" The officer asked Lopez what he meant, and he responded, "You know, a better SWAT team, better shooters, better dogs, more helicopters, not needing the Mexican police to catch me."

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, and asks this court to review the record for error as *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) mandates. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel sets forth the following possible, but not arguable, issues: (1) whether the trial court improperly admitted Lopez's spontaneous statements to the arresting officers when he was not given

a *Miranda* warning³; (2) whether substantial evidence supports the jury's verdicts on counts 4 through 6; (3) whether there was sufficient proof of the prior strike convictions; (4) whether Lopez was entitled to sentencing under November 2012 amendments to the Three Strikes law (Proposition 36), even though he was armed with a firearm during the commission of his crimes (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii)); (5) whether he was "entitled to sentencing as a 'second-striker' based on the fact that his current crimes of conviction are neither a serious or violent felony."⁴

We granted Lopez permission to file a brief on his own behalf, and he has not responded. Our review of the record under *Wende* and *Anders*, including consideration of the possible issues listed under *Anders*, has disclosed no reasonably arguable appellate issues. Lopez's counsel has competently represented him in this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

O'ROURKE, J.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

⁴ Points 4 and 5 appear to be essentially the same.